

Why Minors Accused of Serious Crimes Cannot Waive Counsel

Stephen J. Ceci

In Chicago recently, a 9-year-old boy was charged with murder after confessing under police interrogation to having been in a fight with his 5-year-old foster brother the day before his brother died. The boy's admission was made with no lawyer present, at 12:45 a.m., after he had been held in custody for nearly five hours. He supposedly waived his Miranda rights to remain silent, to refrain from making self-incriminating statements, and to have counsel present; he allegedly did this knowingly and without coercion.

In a controversial decision, a Cook County judge threw out the boy's confession. Elsewhere around the nation, there have been many similar cases. In Austin, Texas, 11-year-old LaCresha Murray made self-incriminating statements during a lengthy police interrogation at which neither parent nor counsel was present. Based on these statements, she was convicted of murdering a 2-year-old in her care and sentenced to 25 years. An appellate court judge overturned her conviction on appeal, though prosecutors were reported to be challenging this reversal in Texas Supreme Court.

From the perspective of psychological research, these judges were correct: Many innocent adults have succumbed to the pressures of lengthy interrogation, and it is unrealistic and inhumane to expect children to advocate for their best interests under such intense circumstances, despite the attempt by law enforcement to explain their Miranda rights.

Volumes of research demonstrate children's heightened suggestibility, willingness to comply to gain adult approval, and lack of understanding of the ramifications of their statements. For more than two decades, I have studied the factors that cause children to succumb to adult suggestions and pressures to comply. For the cognitively-unarmed child, an interrogation by experts is no contest—children can be made to say things

that are incriminating, even if they are false. Those familiar with the July 1998 murder of Ryan Harris in Chicago will recall that two boys, aged 7 and 8, confessed to murdering and molesting the 11-year-old girl after hitting her on the head with a rock while she was on her bicycle. The boys made their confessions without counsel present during a lengthy interrogation that was not taped. Later, a 27-year-old ex-con's semen was found on the dead girl's body and he was indicted for her murder. The two boys have been exonerated. Why did these children admit to things they didn't do?

Consider the techniques sometimes used by police to interrogate children. Interrogators are permitted to deceive, promise, and threaten to obtain a confession. While most adults may be sophisticated enough to demand their rights to counsel under such circumstances, children are not.

Can a child, for example, appreciate that the police may be lying when they claim that the decedent's eyes have been removed from his body and will be used as evidence against the child because they contain the image of the last person the decedent saw before being killed—the child himself? Or can a child be expected to appreciate the absurdity when an interrogator claims to have removed his fingerprints from the decedent's sweat pants? Can a child be expected to understand the significance of every statement made during hours of pressurized questioning? Can a child stand up to *relentless* assertions by powerful authority figures claiming they already have proof the child is guilty, and therefore the interrogation is not about denying but only about explaining whether they killed out of malice or out of anger, or by accident? Does a child understand the inherent trap when an interrogator tells him—as was vividly demonstrated on a recent ABC 20/20 episode involving the interrogation of

12-year-old Anthony Harris in New Philadelphia, Ohio—that he has a choice between one of two options, either to admit he killed out of anger or that he murdered as a result of careful planning? (If he admits to the former, the interrogator tells the child that he can do something to help, that he will allow the child to go home, and that he will write a letter to the judge urging leniency.) And, most significantly, does the child really believe that he has the right to refuse to answer a question until he consults with an attorney who will be appointed to represent him? Many children, particularly inner city ones, do not initially accept the interrogator's offer to have an attorney present because attorneys are associated with doing bad things. Can a child be expected, after an hour of interrogation, to suddenly recall the offer of counsel and demand to speak to an attorney before answering the next question? Most adults cannot do this!

Unsurprisingly, after it becomes clear that they admitted to murder, the faces of these children look like the proverbial cow in the corral who only now comprehends the slaughterhouse concept. To be sure, such pressurized tactics are effective in prompting confessions from the mouths of guilty children. The problem is that they can also coerce confessions from innocent children. Law enforcement professionals face a miserable dilemma in their efforts to protect society from truly dangerous children. Nevertheless, court-sanctioned interviewing techniques can sabotage the search for truth.

What does research tell us about children's thinking during interrogation? To those of us who study young children's intellectual development, one of its enigmas is their ability to reason like adults about emotionally neutral issues, while displaying immature thinking when confronted with emotionally charged situations.

Children actually *believe* interrogators who tell them that if they admit they murdered, they can go home. Most adults would immediately distrust such a statement. But a child desperate to go home often does not. When asked if he believed he would be allowed to go home if he signed a murder confession, 12-year-old Anthony Harris said, "Yes, I did." The fear and lacerating loneliness that comes with interrogation by a highly trained professional leads to both true *and* false confessions. Children are not the equals of their adult examiners: We must not delude ourselves that a child will never admit to something he did not do.

Can high-pressure tactics be justified because they may be the most effective way to get a reluctant child to admit a heinous crime? Perhaps, if the child indeed committed the crime. But what if the child did not? This approach is akin to burning down the barn to roast the pig. Transcripts of children interrogated without counsel show they often do not realize what they were being asked or what they were admitting to. Like mentally ill and feeble-minded adults, children represent a special class of defendants who absolutely require representation by counsel. It is unreasonable to expect children to withstand periods of confinement and pressurized questioning, after being told repeatedly that they are lying when they profess their innocence and that witnesses are ready to testify against them.

How can we guard against inappropriate interrogatory techniques? How can we ensure that children are dealt with in a developmentally appropriate manner?

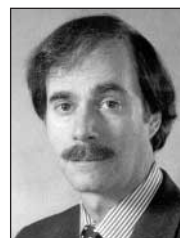
Key to such goals is the electronic preservation of the child's entire interrogation. Interviews are only rarely recorded; interviewers customarily testify on the basis of their memory, aided by notes. However, my research demonstrates that interviewers cannot accurately remember what children tell them. Interviewers often omit important exculpatory information, reverse the voice of who said what, and alter the gist of the child's statements.

Judges are often shocked when I show them what a child actually told an interviewer compared with what the interviewer claims the child said—even when the interviewer was warned to take careful notes because her or his memory would be tested. It is not enough for an interviewer to remember that the child disclosed guilt: Judges need to know the "atmospherics" of the interview, how long it lasted, how many times the child denied guilt before admitting it, and how many threats, bribes, or other inducements were employed to coax the child's disclosure.

No American should endorse the sentiment, "Anything worth fighting for is worth fighting dirty for." But isn't that what we are doing when we detain young children for hours, unanchored, loosed in a world of powerful adults promising, cajoling, threatening, insulting, and intermittently touting friendship? The stakes are too high to permit children to waive the right to counsel or to remain silent. Children as young as 11 can be sentenced to life in prison in some states. Across the country, 13-year-olds can be tried as adults. Children as young as 8 can be asked to waive their Miranda

rights. In some states, 16-year-olds can be sentenced to death.

All children accused of serious crimes must be represented by counsel. And all interviews—not merely the final one in which a child makes a guilty admission—must be electronically preserved. Only then can judges decide if a child's confession developed appropriately. Last year, we celebrated the 100th anniversary of the establishment of the first children's court in the United States. As we enter a second century of recognition that children need special protections, it is ironic that we are witnessing a chilling devolution of children's rights.



Stephen J. Ceci is the Helen L. Carr Professor of Developmental Psychology at Cornell University. He co-authored (with Maggie Bruck) the 1995 book, Jeopardy in the Courtroom: A Scientific

Analysis of Children's Testimony, which won the prestigious William James Book Prize awarded by the American Psychological Association. Ceci's many honors include an NIH Research Career Scientist award and a Senior Fullbright-Hayes fellowship. He is the author of more than 300 articles, chapters, and books, mostly in the area of child intellectual development. Ceci serves on the editorial board of several scholarly journals.

American Judges Association - Annual Meeting and Educational Conference September 10-15, 2000 Kansas City, Missouri

This year's AJA annual meeting will be held September 10-15 in Kansas City. The meeting consists of an educational conference plus AJA business meetings, which include a general assembly for all AJA members and meetings of the AJA Executive Committee, Board of Governors, and other committees. For the budget-minded attendee, the educational programs all take place in a three-day period. A tentative schedule for the conference is found at page 25 of this issue. More information can be found by checking the AJA's general Web site (<http://aja.ncsc.dni.us>) or by checking the special AJA Conference 2000 Web site (<http://www.law.umkc.edu/aja>).